

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PETER ALLEN, et al.,

Plaintiffs,

-against-

CARL KOENIGSMANN, et al.,

Defendants.

No. 19-CV-8173 (LAP)

ORDER

LORETTA A. PRESKA, UNITED STATES DISTRICT JUDGE:

The Court has reviewed the parties' letters regarding Plaintiffs' request to admit the Medications with Abuse Potential Request Forms ("MWAP Forms") in PDF format, even though the MWAP Forms' native format is in Microsoft Excel. (See dkt. nos. 206, 219, 222 (letters); see also dkt. nos. 207, 208, 219-1, 219-2, 223 (declarations and relevant attachments).) Construing the parties' papers as their motion papers, the motion to admit the converted MWAP Forms is GRANTED.

First, Plaintiffs submitted a declaration from Molly Curran, (see dkt. no. 207), detailing the myriad problems with trying to view the MWAP Forms as produced. Ms. Curran set out in great detail the steps she took to convert the forms into a readable PDF format. The attachments to her declaration bear out her representations, (see dkt. nos. 207-1 to 207-9), as do the exhibits to Ms. Agnew's reply declaration, (see dkt. nos. 223-1 to 223-10).

Second, Defendants submitted no affidavit from a person with knowledge contradicting, in any way, Ms. Curran's declaration. Indeed, Mr. Horan acknowledges in his letter that "[w]hile all of the information on the MWAP Forms is accessible when accessed in electronic format, the formatting of these spreadsheets means that, in some cases, some information is not visible or legible if the Excel spreadsheets are printed or automatically converted to PDF format." (Dkt. no. 219 at 1-2.) Counsel goes on to say that the Defendants' IT department had no solution for the problem. (Id. at 2.) Importantly, however, counsel does not contend that Plaintiffs' conversion method resulted in any inaccuracies.

Thus, there is no cognizable factual dispute between the parties that (1) the MWAP Forms are not legible or usable in the spreadsheet form they were produced in, and (2) the conversion of the MWAP Forms, as described by Ms. Curran, resulted in a "counterpart produced by a[n] . . . electronic . . . process or technique that accurately reproduces the original." FED. R. EVID. 1001(e). For these reasons, Plaintiffs' motion to admit the MWAP Forms in PDF format [dkt. no. 206] is GRANTED.

SO ORDERED.

Dated: March 1, 2021
New York, New York


LORETTA A. PRESKA, U.S.D.J.